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| Notice of Allowability | Application No. | Applicant(s) | |
| | 10/019,964 | FUCHS ET AL. | |
| | Examiner | Art Unit | |
| | Helen F. Pratt | 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1-6-05.
2. ☒ The allowed claim(s) is/are 30,31,33,36,47,48,50,51 and 54-56, renumbered as claims 1-11.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Barrett on 2-17-05.

The application has been amended as follows:

In claim 30, line 5, after "composition", - and the composition provides 30% to 100% of the recommended daily allowance of vitamins and minerals per 1000 kcal (4187 kJ) - .

Claim 32 has been canceled.

Claims 37, 38, 39, 42, 43, 44, 46 have been cancelled.

In claim 47, line 4 after "vitamins" , - in which in the gelled nutritional composition, the protein source provides 10% to 25% of the energy of the composition and the carbohydrate source provides 75% to 90% of the energy of the composition, and in which the composition provides 30% to 100% of the recommended daily allowance of vitamins and minerals per 1000 Kcal (4187 kJ) - .

Claim 49 has been cancelled.

Claims 52 and 53 have been cancelled.

In claim 54, line 4, after "vitamins" - in which in the gelled nutritional composition, the protein source provides 10% to 25% of the energy of the composition and the

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carbohydrate source provides 75% to 90% of the energy of the composition, and in which the composition provides 30% to 100% of the recommended daily allowance of vitamins and minerals per 1000 Kcal (4187 kJ) - .

The following is an examiner's statement of reasons for allowance: the arguments as set for by the Attorney of record are persuasive. Further, the reference to Schneiderwirth (2,487,600) which was cited for showing that it was known to add vitamins and minerals to a gelled composition is not seen as combinable with Bachler et al., as the reference to Schneiderwirth is to an entirely different type of gel than that claimed, i. e. it is not based on whey protein or any protein, but is gelled by the use of alkaline earth metal salts and citrate (col. 2, lines 18-20).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


HELEN PRATT
PRIMARY EXAMINER